

## **INITIAL STATEMENT OF REASONS**

### **CHAPTER 12. VICTIMS OF CORPORATE FRAUD COMPENSATION FUND**

#### **SECTION 22500. DEFINITIONS.**

#### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

The terms used in conjunction with Victims of Corporate Fraud Compensation Fund do not have commonly known definitions and are specific to the program.

#### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22500 defines the terms used in Chapter 12 of the proposed regulations. These terms include the following: Victims of Corporate Fraud Compensation Fund; application; party; person; claimant; judgment debtor; final judgment; court of competent jurisdiction; and county in which a judgment was rendered. All references to such terms shall include singular and plural forms.

#### **NECESSITY**

Defining the terms used in conjunction with the Victims of Corporate Fraud Compensation Fund will assist claimants and judgment debtors in understanding the program parameters and requirements.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

#### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

#### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22501. APPLICATION FOR PAYMENT OF VICTIMS OF CORPORATE FRAUD COMPENSATION FUND.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22501 establishes the following procedures for a claimant to submit an application to the Secretary of State for payment from the Victims of Corporate Fraud Compensation Fund: (1) obtain a final judgment, arbitration award or criminal restitution order against a corporation based on corporate fraud; (2) complete the application; (3) verify the completed application and attachments; and (4) deliver the completed application to the Secretary of State by one of the approved methods identified in Section 22501. Section 22501 also specifies the deadline for submitting an application after a final judgment.

**NECESSITY**

A claimant must take certain steps prior to submitting an application to the Secretary of State in order to qualify for payment from the Victims of Corporate Fraud Compensation Fund. The application submitted to the Secretary of State must be based on a final judgment, including, but not limited to, a criminal restitution order or an arbitration award, against a corporation based on corporate fraud. Verification of the application and attachments provides some assurance of the authenticity and accuracy of the information provided therein. The two recognized methods of delivery (in person or by certified mail) provide proof of receipt. The deadline for submitting an application for payment after a final judgment is entered provides enough time for the claimant to pursue collection of their judgment and submission of the application in the event that the judgment is not able to be satisfied.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22502. FORM OF APPLICATION.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22502 specifies the required information a claimant must disclose on the application form and in the attachments to the application form. Section 22502 also defines judgment, complaint, and judgment debtor for the purpose of an application based on a criminal restitution order.

**NECESSITY**

The Victims of Corporate Fraud Compensation Fund provides a resource for satisfying a final judgment, including, but not limited to, a criminal restitution order or an arbitration award against a corporation based on corporate fraud. The Secretary of State must receive sufficient information from a claimant to determine whether or not a claimant is eligible for payment from the Victims of Corporate Fraud Compensation Fund and the amount of said payment.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

## **SECTION 22503. NOTICE REQUIREMENTS.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22503 provides the procedures that a claimant shall follow to notify a judgment debtor that a claim has been filed with the Secretary of State for payment from the Victims of Corporate Fraud Compensation Fund, the opportunity and deadline for a judgment debtor to respond to the Secretary of State and that a judgment debtor who fails to file a response shall not be entitled to further notice of any action or proposed action taken by the Secretary of State. Section 22503 also includes the statement that must be included in the notice to the judgment debtor.

### **NECESSITY**

The judgment debtor is provided with notice of the claim and given an opportunity to respond since the judgment debtor is responsible for reimbursing the Victims of Corporate Fraud Compensation Fund for any payments made to satisfy a final judgment, including, but not limited to, a criminal restitution order or an arbitration award.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

## **SECTION 22504. RESPONSE BY JUDGMENT DEBTOR.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22504 establishes the requirements for the judgment debtor's response. The information contained in the response must be verified by the judgment debtor and must include verified proof of service upon the claimant or claimant's attorney. The response shall include the contact information for the judgment debtor or judgment debtor's attorney that shall be used for all correspondence and notices relating to the claim.

### **NECESSITY**

Requiring the response to be verified by the judgment debtor provides some assurance of the authenticity and accuracy of the information therein. Verified proof of service upon the claimant also ensures the claimant has knowledge of the response of the judgment debtor. Current contact information provides all parties with the best avenue for relaying information regarding the claim.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

## **SECTION 22505. SUBSEQUENT SERVICE OF CORRESPONDENCE AND NOTICES.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22505 establishes procedures for serving correspondence and notices on all the parties. Section 22505 also provides the procedure for notifying parties of a change of address.

### **NECESSITY**

Section 22505 ensures that all parties have a common understanding as to where and how correspondence and notices are to be served.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

## **SECTION 22506. INCOMPLETE APPLICATION.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

## **SPECIFIC PURPOSE OF THE REGULATION**

Section 22506 outlines the period of time in which the Secretary of State has to review an application for deficiencies, procedures for notifying a claimant of any deficiencies in an application, the claimant's recourse to the court under Section 22512 of the proposed regulations in the event of an irreconcilable dispute between the claimant and the Secretary of State, the period of time in which the claimant has to respond to the deficiency notice, and that if no response to the deficiency notice is received within a specified period the application may be denied.

## **NECESSITY**

The Secretary of State must identify the period of time in which the application shall be reviewed for compliance with these proposed regulations. Given the extensive information required in the application, it is expected that a number of applications will be deficient. To facilitate the processing of an application, the Secretary of State shall provide an itemized deficiency notice providing a claimant with the opportunity to correct the identified deficiencies within a specified period of time. The deadlines are needed to ensure that an application is processed within a reasonable period of time and, if the claimant does not meet certain deadlines, then the Secretary of State may deny the application.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

## **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

## **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

## **SECTION 22507. REVIEW BY THE SECRETARY OF STATE.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22507 specifies the deadlines for submitting applications, which will determine the fiscal year in which payments shall be made for approved claims. The Secretary of State shall not approve payment of claims that total more than the amount of the funds available for the fiscal year.

### **NECESSITY**

The Secretary of State needs to have the applications submitted by the deadline to allow for review and determination of how many applications are eligible for payment during a particular fiscal year. This will prevent the Secretary of State from exceeding the amount available in the fund for that year. All applications received after March 31 will be considered for payment in the next fiscal year.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.



## **SECTION 22508. FINAL DECISION ON APPLICATION.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22508 establishes that the Secretary of State shall have until July 31 in the year following the fiscal year in which the application was submitted to render a final decision on an application, unless that period is extended in writing by the claimant. If the Secretary of State fails to do so the application is deemed denied. The Secretary of State may also enter into a compromise with the claimant to pay less than the amount requested in an application. If a claimant refuses to accept a compromise offered by the Secretary of State, the application shall be deemed denied. Evidence of settlement offers and discussions between the Secretary of State and claimant shall not be competent evidence in judicial proceedings undertaken by a claimant pursuant to Section 22512 of the proposed regulations. In considering and investigating a claim the Secretary of State may use all means available under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

### **NECESSITY**

Defining the period of time in which a final decision on an application shall be rendered ensures that the review period shall be limited in duration. The Secretary of State may find the need to propose a compromise to a claimant for less than the amount requested in the application based on the investigation of the claim or the amount available in the Victims of Corporate Fraud Compensation Fund. Under Section 22507 of the proposed regulations, the Secretary of State may not approve the payment of claims that total more than the amount of funds available in the Victims of Corporate Fraud Compensation Fund. If the compromise is not acceptable to the claimant, the application shall be denied. The Secretary of State must have all means available to investigate a claim and validate the information provided.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22509. FORM OF DECISION.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22509 establishes the form and content of the notice of the decision issued by the Secretary of State to both the claimant and judgment debtor, including information regarding judicial review of the decision if the application is denied. If payment is approved, the judgment debtor shall receive a copy of the decision along with a notice that the judgment debtor is responsible for reimbursing the Victims of Corporate Fraud Compensation Fund for the amount of the payment plus interest. If reimbursement is not made, the corporation shall be suspended and not eligible for reinstatement until the Victims of Corporate Fraud Compensation Fund has been reimbursed the payment plus interest at the prevailing legal rate. The notice shall also include the judgment debtor's right to judicial review of the decision.

**NECESSITY**

The claimant and judgment debtor are entitled to receive written notification of the Secretary of State's final decision and their respective rights to judicial review, if applicable. The judgment debtor is entitled to a copy of the decision and the notice identifying the judgment debtor's responsibility to reimburse the Victims of Corporate Fraud Compensation Fund in order to avoid having its corporate rights, powers and privileges suspended.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22510. PROCEDURE UPON FILING OF WRIT OF MANDAMUS BY JUDGMENT DEBTOR.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22510 prevents the Secretary of State from making a payment on an application if a judgment debtor files a writ of mandamus as provided in Section 22509 until such time as the writ of mandamus is denied and the denial becomes final. Section 22510 further provides that if the writ of mandamus is granted, the application shall be deemed denied.

**NECESSITY**

Section 22510 ensures that the Secretary of State will not make a payment when there is a possibility that the Secretary of State's decision to approve the claim will be overturned.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD  
LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22511. PRORATION WHERE AGGREGATE VALID APPLICATIONS  
EXCEED LIABILITY LIMITS.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION  
OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22511 provides that if the Secretary of State makes a preliminary determination prior to rendering a decision on an application that the aggregate valid applications of all claimants are likely to exceed the funds available, then the Secretary of State shall distribute the funds available to claimants in the ratio that their respective losses, as supported in the applications, bear to the aggregate of the approved applications. The distribution shall not be based on any priority, including the dates judgments were rendered or the dates applications were received by the Secretary of State.

**NECESSITY**

If there are not enough funds to pay all approved applications the proration outlined in Section 22511 ensures that as many claimants as possible will receive some level of compensation from the Victims of Corporate Fraud Compensation Fund.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR  
DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE  
AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

## **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

### **SECTION 22512. CLAIMANT APPEAL PROCESS.**

#### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

#### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22512 permits a claimant whose application has been denied by the Secretary of State to file a verified application in superior court for an Order Directing Payment Out of the Victims of Corporate Fraud Compensation Fund. Copies of the verified application shall be served upon the Secretary of State and the judgment debtor. The claimant shall file proof of service with the court. In addition to the verified application, the notice outlined in subdivision (b) of Section 22512 of the proposed regulations shall also be served upon the judgment debtor, which informs the judgment debtor of the right to defend in court against the claim, establishes the deadline for submitting a written response to the court and notifies the judgment debtor that if, as a result of the judicial action, the Secretary of State makes a payment from the Victims of Corporate Fraud Compensation Fund, the judgment debtor will be responsible for reimbursing the Victims of Corporate Fraud Compensation Fund the amount of the payment plus interest or be subject to suspension.

#### **NECESSITY**

Section 22512 provides a claimant with judicial recourse in the event that the Secretary of State denies the claimant's application. Section 22512 further ensures that the Secretary of State and judgment debtor have notice of the action taken. Judgment debtors are also informed of the right to defend against the claim by filing a written response with the court within a specified time and the obligation to reimburse the Victims of Corporate Fraud Compensation Fund in the event payment is made to the claimant.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22513. PREREQUISITE FOR PAYMENT FROM VICTIMS OF CORPORATE FRAUD COMPENSATION FUND.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22513 provides that whenever a court proceeds upon an application under Section 22512 of the proposed regulations, the court shall order payment from the Victims of Corporate Fraud Compensation Fund only upon a determination that the claimant has a valid cause of action under Section 22501 and has complied with Section 22502. Section 22513 further authorizes the Secretary of State to defend any such action and permits the Secretary of State to have all appropriate means of defense and review. If it appears there are no triable issues and the application is without merit, the Secretary of State may move the court, at any time, to dismiss an application and the motion may be supported by affidavit of any person or persons having knowledge of the facts. The Secretary of State may, subject to court approval, resolve a claim by entering into a compromise with the claimant.

**NECESSITY**

Section 22513 assures that the court makes the determination of compliance with Sections 22501 and 22502 of the proposed regulations to assure uniform review of the applications. The Secretary of State may defend any such action and must have recourse to all means of defense and review. The Secretary of State must also have the ability to resolve the matter by entering into a compromise with the claimant subject to the approval of the court.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real

Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22514. RIGHTS OF JUDGMENT DEBTOR.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22514 permits the judgment debtor to defend an action against the Victims of Corporate Fraud Compensation Fund on the judgment debtor's own behalf and have recourse to all appropriate means of defense and review. All matters in the underlying action are conclusive as to the judgment debtor and the claimant in the proceeding against the Victims of Corporate Fraud Compensation Fund.

**NECESSITY**

The judgment debtor should have the ability to respond to the claimant's application, as the granting of the application would result in the judgment debtor having to reimburse the Victims of Corporate Fraud Compensation Fund. The judgment debtor is also subject to suspension in the event the reimbursement is not made.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22515. LIMITATIONS ON PAYMENT FROM THE VICTIMS OF CORPORATE FRAUD COMPENSATION FUND.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22515 limits the payment from the Victims of Corporate Fraud Compensation Fund to twenty thousand dollars (\$20,000) for any one transaction, regardless of the number of claimants or judgments against the judgment debtor. When multiple judgment debtors are involved in a transaction and the conduct of two or more of the judgment debtors are the basis of the judgment, the claimant may seek to recover from the Victims of Corporate Fraud Compensation Fund based on a judgment against any of the judgment debtors, subject to the limits previously stated.

**NECESSITY**

The limit of the amount of the payment for any one transaction helps ensure that the Victims of Corporate Fraud Compensation Fund will maintain funds to remain operable.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.



**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD  
LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22516. RECOVERY FROM CORPORATION UPON PAYMENT FROM  
VICTIMS OF CORPORATE FRAUD COMPENSATION FUND.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION  
OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22516 establishes that a judgment debtor must pay the amount of a claim paid from the Victims of Corporate Fraud Compensation Fund at the time the judgment debtor files its next statement of information pursuant to Section 1502 or Section 2117 of the Corporations Code or be suspended from exercising all rights, powers and privileges of a corporation. Section 22516 further states that bankruptcy shall not relieve the judgment debtor from the obligation to pay the amount owed to the Victims of Corporate Fraud Compensation Fund.

**NECESSITY**

Section 22516 sets the date by when the judgment debtor must reimburse the Victims of Corporate Fraud Compensation Fund and authorizes the Secretary of State to impose consequences in the event a judgment debtor does not reimburse the amount of the claim plus interest within the time allowed. This is required to help ensure the judgment debtor will reimburse the fund.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR  
DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE  
AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

**SECTION 22517. DISPOSITION OF FUNDS RECEIVED BY THE SECRETARY OF STATE.**

**PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

**SPECIFIC PURPOSE OF THE REGULATION**

Section 22517 requires the Secretary of State to deposit any sums received pursuant to Chapter 12 of the proposed regulations to be deposited in the State Treasury and credited to the Victims of Corporate Fraud Compensation Fund.

**NECESSITY**

Section 1502.5 specifically states that the revenue in the Victims of Corporate Fraud Compensation Fund shall be used for the sole purpose of providing restitution to the victims of corporate fraud. Section 22517 ensures that any additional sums received, such as interest paid by a judgment debtor, shall also be deposited in the Victims of Corporate Fraud Compensation Fund.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

## **SECTION 22518. RIGHTS OF CLAIMANT.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22518 requires the Secretary of State to be subrogated to all of the rights of the claimant and the claimant to assign all rights, title, and interest in the judgment to the Secretary of State, permitting the Secretary of State to recover the payment to the claimant plus interest from the judgment debtor. Any of these amounts recovered will be deposited into the Victims of Corporate Fraud Compensation Fund.

### **NECESSITY**

If the Secretary of State has paid a claim from the Victims of Corporate Fraud Compensation Fund, the Secretary of State should be subrogated to all of the rights of the claimant to seek recovery of the payment to the claimant plus interest from the judgment debtor to help ensure that the Victims of Corporate Fraud Compensation Fund has funds to remain operable.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.

## **SECTION 22519. WAIVER OF RIGHTS.**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Section 1502.5 of the Corporations Code establishes the Victims of Corporate Fraud Compensation Fund and charges the Secretary of State with promulgating regulations to administer the program and define eligibility.

### **SPECIFIC PURPOSE OF THE REGULATION**

Section 22519 specifies that failure of an aggrieved person to comply with all of the provisions of Chapter 12 of the proposed regulations shall constitute a waiver of any rights under Chapter 12 of the proposed regulations.

### **NECESSITY**

Aggrieved parties that fail to comply with the provisions of the proposed regulations should not benefit from the rights granted thereunder.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR DOCUMENTS**

In developing the proposed regulations, the Secretary of State reviewed the statutes and regulations governing the Real Estate Recovery Account administered by the Department of Real Estate, which provides compensation to members of the public who have been defrauded by real estate licensees.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS**

None.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

None.